

N-16 Legal health care decisions in Alaska

Purpose: To describe advance directives and agents who execute health decisions.

Elders should be included in discussions and decisions about end-of-life care. Confusion about time or place does not make elders incapable of expressing their wishes and preferences.

Under the law every adult has the right to make their own health care decisions, including the right to decide what medical care or treatment to accept, reject, or discontinue.

Medicare and Medicaid require facilities that receive payments from them to provide elders with written information about the right to accept or refuse treatment and to prepare advance directives.

Advance directive is a written statement of preferences for future health care. There are 2 kinds of advance directives: (1) living will, and (2) durable power of attorney for health care.

1. Living will is a type of directive that tells what kind of life-sustaining treatments the elder wants if they become unresponsive or incompetent and unable to make medical decisions. It guides the family and physicians in deciding which medical treatments to use at the end of the elder's life. It does not name an agent to make medical decisions.

Life-sustaining treatments can include artificial feeding, mechanical ventilation, resuscitation, defibrillation (AED), antibiotics, dialysis, and other invasive procedures.

A living will is effective with a terminal condition or permanent unconscious state. A terminal condition is an incurable or irreversible illness or injury that results in death in a short amount of time without life-sustaining procedures.

A will and a living trust are both financial documents that state who receives the elder's financial assets and property.

2. Durable power of attorney (DPA) for health care (also called the medical power of attorney) is a type of directive that appoints an agent (also called attorney-in-fact, proxy, or surrogate) to make future health care decisions when an elder is unable due to illness or incapacity. This agent carries out the wishes of the elder. The DPA's decisions end upon the elder's death.

Power of attorney (POA) status can be broad or limited. Specifying whether the POA is *financial* or *health care* limits the scope of decisions made by the POA.

The instruction and appointment of a DPA take effect when the elder lacks capacity. Capacity to make health care decisions is based on the ability to understand, evaluate, and communicate. The primary physician determines if the elder has capacity to make medical decisions.

Adult elders or their agents have the ethical and legal right to accept or refuse treatments. When the elder lacks decision-making capacity, treatment decisions are based on the elder's advance directive. The DPA is required to make health care decisions in accordance with instructions and known wishes that the elder has specified.

If there are no written instructions, the agent is the decision maker and acts according to the elder's desires and view of what is in the elder's best interest. Families often disagree over what treatments the elder prefers. The agent has the legal right to make decisions for the elder, even if close family members disagree.

The DPA is a legal document using a special form, and must be signed to be valid. A back-up agent is wise if the primary DPA is unavailable. A relative or friend can be a DPA, but not an attending physician or Home staff person.

An elder can change or cancel the directive at any time if they are considered competent. To make changes to a signed directive, a new directive must be completed. Changes must be made, signed, and notarized or witnessed by two people.

An Alaska directive is not effective in a treatable medical emergency. DNR means *do not resuscitate*; it does *not* mean do not treat.

Ambulance and hospital emergency personnel are required to provide CPR unless given a separate DNR order. In Alaska, a DNR order or Comfort One order signed by the physician is needed. A department (DHSS) approved DNR form, DNR card, or DNR necklace or bracelet worn or carried by the elder is examined by the physician or health care provider to establish the elder's DNR status.

A health care provider may refuse to observe the stated wishes of the elder or DPA due to conscience. The provider must inform the elder or DPA immediately and transfer to another provider.

Terminology:

Comfort One is a non-hospital DNR order in Alaska that is written for elders who are living in a residential care setting and want to refuse CPR. Comfort One directs emergency medical care providers, emergency medical technicians, paramedics, and emergency department physicians to withhold CPR. These orders are written on an official Comfort One form and are signed by the elder and physician.

Conservator or guardian is appointed by a judge to take charge of an incapacitated elder's legal, financial, and personal affairs. The conservator must file reports, inventories, and accounts with

the court. A Conservator of the Estate handles the financial and legal affairs of the elder. A Conservator of the Person handles medical care, food, clothing, and residence decisions.

DNR (do not resuscitate) instructs care givers to not perform CPR if the heart stops or breathing stops. The DNR order is written by the elder's physician in the elder's medical chart. An elder's DNR order should accompany the elder on every transfer, including trips to the hospital. When the elder arrives at the new facility, a new DNR order may need to be written.

The elder or authorized agent can cancel a DNR order at any time by notifying the attending physician, who removes the order from the medical record.

Hospice is a program to aid the elder who has been given a short time to live. It is provided in the Home by a hospice agency and is interdisciplinary to enhance the quality of life. Hospice includes pain control and emotional support for family and elder.

Medical futility is when medical personnel decide that further treatment is useless.

MOST (medical orders for scope of treatment) form helps the medical provider and the Pioneer Home and hospital staff understands clearly and quickly what kind of treatment the elder does or does not want.

Nursing malpractice is not acting according to professional standards of care as a licensed and experienced nurse would do. To prove malpractice there must be duty, a breach of duty, causation, and injury.

Nurses must actively keep up to date on legal decisions regarding these issues. They also deal with their own feelings and values regarding elder choices to seek life-prolonging or death-seeking treatment.

Palliative care or comfort care or hospice care emphasizes pain relief and comfort rather than curing or prolonging life. There is a difference between comfort care and life-sustaining treatment. For example, the physician may order fluid administration to a dying elder for comfort.

Voluntary not eating or drinking is refusing food and liquids, which results in death from dehydration. Hunger and thirst diminish as death nears.

Someone must make decisions when an ill elder cannot. Without directives in the elder's chart, and without a DPA agent, the physician, hospital staff, and family do their best. Health care professionals are trained to keep the elder alive before providing comfort care.

N-16 Approved: 5/23/2014